

SHEET 1 PAGE 1

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01 UNITED STATES DISTRICT COURT
 02 COMMONWEALTH OF MASSACHUSETTS
 03
 04)
 05 TRANS-SPEC TRUCK SERVICE, INC.)
 06 d/b/a/ TRUCK SERVICE,)
 07 Plaintiff)
 08) Civil Action
 09 v.) No. 04-11836-RCL
 10)
 11 CATERPILLAR INC.,)
 12 Defendant)
 13)
 14)

15
 16 DAY TWO OF THE AUDIOVISUAL DEPOSITION OF
 17 JOSEPH M. HOWARD, JR., a witness called on behalf of the
 18 Defendant, taken pursuant to the Massachusetts Rules
 19 of Civil Procedure, before Ellen Dubie, a Professional
 20 Court Reporter and Notary Public in and for the
 21 Commonwealth of Massachusetts, at the Offices of
 22 CAMPBELL CAMPBELL EDWARDS & CONROY, P.C.,
 23 One Constitution Plaza, Boston, Massachusetts, on
 24 Wednesday, SEPTEMBER 28, 2005, commencing at 10:00 a.m.

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 15 On Behalf of the Plaintiff,
 16 Trans-Spec Truck Service, Inc., d/b/a Truck Service
 17
 18 ALSO PRESENT:
 19 Mr. William Barton, Videographer
 20 In-Court Technologies
 21
 22
 23
 24

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01 I N D E X
 02 WITNESS EXAMINATION BY PAGE
 03 JOSEPH M. HOWARD, JR.
 04 (Mr. Grunert) 6
 05

06 E X H I B I T S
 07 NO. DESCRIPTION PAGE
 08 9 Supplemental Answers 14
 09 10 Automobile Loss Notice 28
 10 11 Tri State 10/21/04 Invoice 31
 11 12 Repair Order and Invoice 31
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 14 15 Preventive Maintenance Inspection 36
 15 16 Repair Order and Invoice 37
 16 17 Repair Order and Invoice 38
 17 18 Repair Order and Invoice 39
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 19 20 On-line Claim Report 44
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01 E X H I B I T S
 02 NO. DESCRIPTION PAGE
 03 25 Automobile Loss Notice 54
 04 26 On-line Claim Report 56
 05 27 Automobile Loss Notice 61
 06 28 Southworth-Milton Letter 65
 07 29 Packet of Repair Orders and
 08 Invoices 82
 09 30 Service Claim User Worksheet 107
 10 (Exhibits retained by counsel.)
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01 postponed indefinitely. So I was probably here until
02 I got a flight out of here at that point.

03 Q. What was the name of that case?

04 A. It was four employees from 1996 that were
05 claiming they should have been paid prevailing wage
06 for deliveries to state facilities.

07 Q. Again, I'm trying to learn information that would
08 help me identify --

09 A. It's okay. That's fine. It was an interesting
10 case.

11 Q. Was Trans-Spec the defendant or was Truck Service
12 the defendant?

13 A. TS.

14 Q. And that case was pending where?

15 A. Worcester.

16 Q. At the first installment of this Rule 30(b)(6)
17 deposition we marked a document Exhibit 6. I have an
18 extra copy for your convenience. I'm interested in
19 knowing whether since the first day of your deposition
20 as a 30(b)(6) witness which was August 9th, whether
21 you identified any additional flywheel housing
22 failures on the engines in your Sterling trucks that
23 are not listed in Exhibit 6?

24 A. Not really.

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01 Q. What you do mean by "not really"?

02 A. Well, nothing conclusive that you presented.

03 Q. So as we sit here today, does Exhibit 6 identify
04 all of the flywheel housing failures that Trans-Spec
05 claims are at issue in this case?

06 A. This appears to be accurate but not complete.
07 There were more and we are still looking. We can't
08 find anything concrete to hand you.

09 MR. GRUNERT: Let's mark this Exhibit No. 1,
10 please.

11 MS. REIMER: Do you want to continue the numbers
12 from the last thing?

13 MR. GRUNERT: Yeah, we should continue the
14 numbers. I'm sorry.

15 MS. REIMER: The last one I have is Exhibit 8 for
16 the 30(b)(6). Then I have 8 for the 30(b)(6) and I
17 have 35 for his personal dep.

18 MR. GRUNERT: Right you are.
19 (Exhibit No. 9 marked for identification.)

20 BY MR. GRUNERT:

21 Q. Sir, I'm handing you Exhibit 9, which appears to
22 be some supplemental answers to interrogatories that
23 you've signed on behalf of Trans-Spec yesterday. Is
24 that what they are?

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01 A. I believe so.

02 (Witness reviews documents.)

03 Q. Take a look at the answer to Interrogatory 3, the
04 supplemental answer to Interrogatory 3. I've
05 highlighted some language on that; correct?

06 A. Yes.

07 Q. Could you just read that highlighted language for
08 the record?

09 A. "Trans-Spec also states that as a result of
10 flywheel housing failures in addition to damaged
11 flywheel house and flywheel house bolts, Trans-Spec's
12 trucks suffered damages to the clutch for each
13 flywheel house, flywheel house bolts repair. Trans-
14 Spec had to provide also a solo clutch at a cost of
15 \$790 and that is our cost.

16 "These do not appear on any Caterpillar
17 warranty claim sheets because these clutches were
18 noncovered components that had to be provided by
19 Trans-Spec, whether Trans-Spec undertook the repair on
20 its own or had the repair performed by Minuteman
21 Trucks Southworth, Incorporated, or Tri State Truck
22 Center. The clutch brake, the input shaft" -- that's
23 part of the transmission - "the input shaft bearing,
24 the motor mounts, the starter, and in a couple of

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01 cases, the transmission."

02 Q. Well, the answer doesn't say, "in a couple of
03 cases, the transmission." The answer says, "That as a
04 result of each flywheel house failure, Trans-Spec
05 incurred all of those expenses"; correct? That's what
06 this answer says; right?

07 A. It does say that.

08 Q. And that's not true, is it?

09 A. It could be -- it doesn't have to say that. It
10 doesn't have to sound like that. You can read it and
11 think it means that, or you can read it and think it
12 doesn't mean that.

13 Q. Well, it says Trans-Spec states that "As a result
14 of each flywheel house failure, in addition to damage
15 to the flywheel house and flywheel house bolts, Trans-
16 Spec's trucks suffered damage to the clutch."

17 A. Yes, I understand.

18 Q. "Clutch brake, input shaft, input shaft bearing,
19 motor mount starter, and transmission." That's what
20 it says; correct?

21 A. That's what it says.

22 Q. And that's untrue; correct?

23 A. The transmission part is untrue.

24 Q. It's also untrue that Trans-Spec replaced the

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01 A. Yes.

02 Q. And as to every one of these failures, the clutch

03 break was replaced, is that your testimony?

04 A. For every clutch that we replace, we replace the

05 clutch brake.

06 Q. And for every one of these failures, the input

07 shaft was replaced; is that correct?

08 A. I would say so.

09 Q. And as to every one of these failures, the input

10 shaft bearing was replaced; correct?

11 A. Yes.

12 Q. And as to every one of them, the motor mounts

13 were replaced; correct?

14 A. That's a good question.

15 Q. So maybe not correct?

16 A. Every motor mount in every truck was replaced.

17 Q. And as to every one of the failures identified in

18 Exhibit 6, it's your testimony that the starter was

19 replaced; correct?

20 A. Yes.

21 Q. So if there are records showing that the starters

22 were not replaced in some instances, then those

23 documents are incorrect?

24 A. The starter -- the first thing that goes when the

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01 flywheel housing loosens is in fact the starter. The

02 starter could be replaced prior to it being delivered

03 to a repair facility so the truck will start. That's

04 the first indicator that the flywheel housing is

05 failing is the starter. The drivers of the truck

06 won't start. The starter only makes a noise, and

07 that's a good diagnosis for possible flywheel housing

08 loosening and breaking.

09 Q. And will it have been Trans-Spec that will have

10 replaced the starter; is that your testimony?

11 A. Not necessarily but possibly.

12 Q. So as to each and every one of these failures, it

13 is your testimony that either among Trans-Spec's

14 records or among the records of the company that did

15 the repair, we will find a record saying the starter

16 was replaced; is that correct?

17 A. We could find records of purchases of starters,

18 of an overabundant amount of starters that a fleet of

19 our size would possibly use.

20 Q. And you are testifying that if Trans-Spec

21 replaced the starter, there would not necessarily be a

22 record of that work being done? Is that what you're

23 saying?

24 A. Of the work being done, maybe not.

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01 Q. So Trans-Spec's repair records are not complete

02 as to what was done on these trucks, is that what

03 you're telling me?

04 A. That's obvious.

05 Q. So these trucks may have sustained damage or had

06 work done on them unrelated to flywheel housing

07 failures, which is not reflected in Trans-Spec's

08 repair records; is that correct?

09 MS. REIMER: Objection as to form.

10 A. That's possible.

11 Q. Is it correct or not?

12 A. I can't guarantee that our records are 100

13 percent accurate on everything, except flywheel

14 housings. If they're not accurate on flywheel

15 housings, then possibly they're not accurate on

16 something else.

17 Q. Now, the supplemental answer to the third

18 interrogatory states a little farther down, quote: In

19 addition, flywheel house failures caused numerous oil

20 leaks on Trans-Spec's property which needed to be

21 cleaned up pursuant to environmental and hazardous

22 material regulations, close quote.

23 Would you go through Exhibit 6, please, and

24 identify for me which flywheel housing failures

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01 identified in Exhibit 6 caused oil leaks on Trans-

02 Spec's properties which needed to be cleaned up?

03 A. They were Sterling C-12 Engines. That's all we

04 had. They park in different places. You have spots

05 on your property and you have to clean them up, and

06 we're the only ones that park in our parking lot.

07 Q. That's not my question. Please identify flywheel

08 housing failure which caused an oil leak which damaged

09 Trans-Spec's property.

10 A. Every C-12 had an oil leak at one time.

11 Q. That's not my question. Please identify each

12 flywheel housing failure which caused an oil leak

13 which damaged Trans-Spec's property.

14 A. Identify a specific vehicle, a specific date, and

15 a specific time; is that what you're asking?

16 Q. Yes.

17 A. I can't. Every truck leaked at one time or

18 another and every truck had to be cleaned up after,

19 whether it was my property or a customer's property.

20 It's every single one of them, not one specific one on

21 a specific day. Every single one of them leaked more

22 than they didn't.

23 Q. Sir, my question is, please go through Exhibit 6

24 and identify for me which of the flywheel housing

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01 failures identified in that document caused oil leaks
02 which damaged Trans-Spec's property, or tell me that
03 you can't do it.

04 A. The first one is -- 6000 leaked.
05 (Witness reviews document.)

06 Q. On what dates, sir?

07 A. It was repaired on 12/16, so it was prior to
08 that.

09 Q. So it is your testimony today that on some date
10 which you cannot identify before December 16, 2003,
11 Truck 6000, as a result of a flywheel housing problem
12 leaked oil which damaged Trans-Spec's property?

13 A. When you replace flywheel housing breaks, it
14 generally damages the input shaft on the transmission,
15 making the transmission leak, and that's specifically
16 flywheel housings. The leaks were caused -- every
17 truck leaked for one reason or another, and flywheel
18 housings leaking -- flywheel housings would cause
19 vibrations, and something would loosen up.

20 Q. Mr. Howard, you've asserted in the complaint in
21 this case and you said in answers to interrogatories
22 that leaks caused by flywheel housings damaged Trans-
23 Spec's property. That is an important factual
24 allegation in this case. I want the details of each

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01 identifying trucks that were out of service. I've got
02 a copy of that for you. Have I accurately
03 characterized what that is?

04 A. Yes.

05 (Witness reviews document.)

06 Q. Why was it that this document was started
07 January 1, 2002, rather than back in January 2000 when
08 the Sterling trucks were first put into service?

09 A. We were trying to find trucks out of service for
10 probable damages with flywheel housings -- flywheel
11 housing failures.

12 Q. Looking at the first page of Exhibit 2, which
13 pertains to the month January 2002.

14 A. Yes.

15 Q. I just want to make sure I'm clear on this.
16 Truck 8900 is not one of the Sterling trucks involved
17 in this case; correct?

18 A. We have so many trucks that's -- I can't identify
19 trucks by numbers.

20 Q. Take a look at Exhibit 6, which I believe does
21 identify the trucks my numbers, and just confirm for
22 me, please, that Truck 8900 isn't one of the ones
23 involved in this case.

24 A. 8900 is not one of the trucks involved in this

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01 leak for each engine caused by flywheel housings. I'm
02 not interested in comments about general leaky
03 engines. So I want that detail because it hasn't been
04 supplied in the answers to interrogatories, and it
05 hasn't been supplied otherwise. I'd like to know the
06 specific dates and specific engines that caused oil
07 leaks as a result of flywheel housing failures that
08 damaged Trans-Spec's property. That's the answer I
09 want.

10 MS. REIMER: Objection as to form.

11 A. Every flywheel that was removed from a truck was
12 covered with oil. Every photograph you have there of
13 the back of an engine block is covered with oil. The
14 only things that have been cleaned are the ones that
15 we did clean for photographs on the flywheel housings.
16 They were steam-cleaned. So you can't show me one
17 picture that you have of an engine block that wasn't
18 covered with oil.

19 Q. Have you completed your answer?

20 A. That's about the best I can do.

21 Q. Sir, at the first day of your Rule 30(b)(6)
22 deposition, you produced to me a document that we
23 marked Exhibit 2 that was a summary that had been
24 prepared of information contained in dispatch records

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01 case.

02 (Witness reviews document.)

03 Q. And Truck 8200 is not one of the trucks involved
04 in this case; correct?

05 A. That's correct.

06 Q. And Truck 7300 is not one of the ones involved in
07 this case; correct?

08 MS. REIMER: I'm sorry, did you say 7300?

09 MR. GRUNERT: Right.

10 A. Yes, I remember that truck. That is correct.

11 Q. It's not involved in this case; right?

12 A. No, it's not.

13 Q. And Truck 7200 is not involved in this case;
14 correct?

15 A. Correct.

16 (Exhibit No. 10 marked for identification.)

17 Q. We talked last time, sir, about accidents that
18 some of your trucks had been involved in. And you
19 were a little fuzzy on the dates of some of them and
20 the truck numbers of some of them. Exhibit 10 appears
21 to be an Automobile Loss Notice relating to a rollover
22 accident occurring on February 27, 2003, that involved
23 Truck No. 8500; correct?

24 A. Yes.

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01 Q. Looking at this document, is it your memory that
02 Truck 8500 in fact rolled over near the intersection
03 of Route 495 and the Mass. Pike on February 27, 2003?

04 A. Yes.

05 (Witness reviews document.)

06 Q. Now, looking at Exhibit 2, it looks like in fact
07 Truck 8500 is reported as having been out of service
08 from that date, February 27, 2003, until February 12,
09 2005; correct?

10 A. That sounds like an awful long time. I don't
11 have the answer to that.

12 Q. You can look at the logs.

13 A. It's out of service, yes. For that accident it
14 sounds like a long time.

15 Q. But in fact, if your dispatch logs are accurate,
16 that truck was out of service from February 28, 2003
17 constantly until February 12, 2005, as a result of
18 that rollover accident; correct?

19 A. It was out of service possibly as a result of the
20 rollover; so I would have to stipulate yes.

21 MS. REIMER: I would insert an objection in
22 there.

23 Q. Now, what I'm interested in knowing is in
24 November 2004 while that truck was out of service as a

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01 would say they're wrong. Maybe they thought it was
02 towed in.

03 MR. GRUNERT: Let's mark the inaccurate document
04 as Exhibit 11.

05 (Exhibit No. 11 marked for identification.)

06 A. Myself and Bob Barton drove that truck. He
07 picked me up. He might have towed it in his garage.

08 (Exhibit No. 12 marked for identification.)

09 Q. You and Mr. Barton drove Truck 8500 to Tri State,
10 even though the No. 2 piston was in pieces?

11 A. As I recall, the truck was skipping and that's
12 why it was brought to Tri State, not for a flywheel

13 housing repair. The truck was noted there with a
14 cracked flywheel. As it was removed, the block was
15 worn from the flywheel moving. It loosened and it had
16 broken bolts. Al Cardoza was called and he wanted
17 them to patch the block. They refused to patch the
18 block. So they replaced the block and the flywheel
19 housing, not from an accident, from wear.

20 Q. You were able to drive the truck to Tri State,
21 even though the No. 2 piston was in pieces?

22 A. It had a skip.

23 Q. Even though the flywheel had eight broken bolts?

24 A. Correct.

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01 result of that rollover for that accident, it was
02 towed to Tri State Truck Service for a flywheel
03 repair?

04 A. Yes.

05 Q. And then taken back to your facility and remains
06 out of service for another two or three months,
07 correct; is that what happened?

08 A. That doesn't sound right. It's our slow season.
09 The truck was repaired, I know that.

10 Q. Well, isn't what you did is that you took that
11 truck to Tri State, even though it was still being
12 repaired as the result of a rollover, and had them
13 repair the flywheel housing that had been broken in
14 the rollover and then billed it to Caterpillar?

15 MS. REIMER: Objection.

16 A. The truck was driven to Tri State.

17 Q. And I'm going to show you Tri State's invoice,
18 October 21, 2004, that says, "tow in 12/21," and
19 you're saying that's incorrect?

20 A. I'm not seeing where it says tow in.

21 (Witness reviews document.)

22 Q. Look at the handwritten notation, it says "tow
23 in."

24 A. Seeing as I drove that truck there myself, I

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01 Q. And the cam containing the thrust pin was broken?
02 You were able to drive it even though it had all those
03 problems?

04 A. The truck was driven.

05 Q. But the truck had been out of service at that
06 time for well over a year.

07 A. The truck was out of service for a long time.

08 Q. Take a look at the documents I marked as
09 Exhibit 12, and let me know if anything in there
10 indicates to you that Exhibit 2 is not accurate when
11 it indicates that that truck was out of service
12 constantly from the date of this accident in February
13 1, 2003, until mid-February 2005.

14 A. I would say it's accurate. It appears to be
15 accurate.

16 (Witness reviews document.)

17 Q. Could you hand those back to me, please, sir?

18 A. I wasn't quite done.

19 Q. Oh, okay.

20 (Witness reviews document.)

21 Q. You will agree with me, won't you, that
22 Trans-Spec, with respect to Truck No. 8500, did not
23 suffer any downtime any later than November 2001 as a
24 result of flywheel housing problems with that truck;

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01 Q. Is it your position that flywheel housing bolts
02 cannot be broken in a rollover accident in a truck?
03 A. Broken not loosened. Actually, no. A flywheel
04 bolt won't break. The flywheel will break. The
05 flywheel housing will break.
06 Q. It might crack?
07 A. The flywheel housing will crack.
08 Q. And if the flywheel housing cracks, it can become
09 loose; correct?
10 A. No, not until it's operated afterwards.
11 Q. Okay. In any event, Truck 8000 was out of
12 service from the end of January 2004 until March 8,
13 2004 as a result of having been in a rollover
14 accident, not as a result of flywheel housing
15 problems; correct?
16 A. I can't say that either. We were having a heck
17 of a time getting flywheel housings. We couldn't find
18 them anywhere. If we couldn't find one -- and I know
19 it took a long time to get flywheel housings. We were
20 buying them from secondary markets. We were --
21 Caterpillar couldn't supply them.
22 Q. Do you know whether or not Truck 8000 was out of
23 service from late January 2004 until March 8, 2004, as
24 a result of accident damage or as a result of flywheel

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01 housing problems?
02 A. I would say both.
03 Q. How much of that time was it out of service as a
04 result of flywheel housing problems?
05 A. We were having more problems getting flywheels
06 than anything else.
07 Q. That's not my question.
08 A. That's the only answer I can give you, sir.
09 Q. So you are not able to tell me how many days
10 between January 28, 2004, the date of this rollover
11 accident, and March 8, 2004, the date of those repair
12 records, this truck was out of service as result of
13 the flywheel housing problem. You can't tell me
14 whether it was one day or more than one day?
15 A. I cannot tell you.
16 Q. Hand me those documents back.
17 (Exhibit No. 25 marked for identification.)
18 Q. Exhibit 25 is an Automobile Loss Notice pertaining
19 to Truck 7500 related to an accident that is said to
20 have occurred December 18, 2001; correct?
21 A. Yes.
22 (Witness reviews document.)
23 Q. And this accident is said to have occurred on
24 Route 9 South in Southborough; correct?

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01 A. Where are you reading that?
02 Q. In the section that says "Location of Accident."
03 A. Oh, yeah. Okay. Yes.
04 Q. Do you have a memory of this accident?
05 A. No. Well, let me see, before I answer that let
06 me take --
07 Q. Sure. Take a moment. It's a long time ago.
08 A. It doesn't list the driver.
09 Q. George Squires is listed. Do you remember it?
10 A. I remember the incident because the driver was
11 terminated because the other truck that he hit was
12 ours. Embarrassing.
13 Q. Looking at the first page of Exhibit 2, and in
14 fact at the second page of Exhibit 2, I see that Truck
15 7500 was out of service the whole month of January
16 2002 and about half the month of February 2002. I'm
17 interested in knowing whether --
18 A. What truck number is that?
19 Q. 7500. Exhibit 2, not Exhibit 6, sir.
20 A. Oh, I'm sorry. The truck had nose damage.
21 Q. My question is was the out-of-service of Truck
22 7500 for January and half of February 2002 related to
23 the damage it sustained in this accident in December
24 2001?

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01 A. I can't say. I really have no recollection of --
02 Q. You don't know?
03 A. I really, really don't know.
04 Q. I want to get back to Truck 8000.
05 Exhibit 26 is an On-line Claim Report Auto and
06 this relates to the rollover accident of Truck 8000
07 that occurred in May of this year; right?
08 (Exhibit No. 26 marked for identification.)
09 A. Yes.
10 Q. And that's the accident that you said caused the
11 truck to be taken out of service and not put back into
12 service; correct?
13 A. Correct.
14 Q. Was Truck 8000 repaired before it was delivered
15 to the purchaser of these trucks?
16 A. I still have this truck.
17 Q. Okay. So is Truck 8000 going to be delivered to
18 the purchaser?
19 A. No.
20 Q. Are you planning on repairing and making use of
21 it?
22 A. No, no.
23 Q. And the purchaser is going to deduct from the
24 amount that it pays Trans-Spec the portion that was

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01 going to be attributable to Truck 8000?

02 A. Oh, yes. He never purchased the truck. He was
03 going to until this happened, and he's not purchasing
04 it now. I was given the truck by the insurance
05 company.

06 Q. Did the insurance company pay Trans-Spec some
07 amount of money attributable to this accident?

08 A. Yes.

09 Q. How much?

10 A. It was a tractor and trailer combination. It was
11 like \$40,000, roughly. It was enough to pay it off.
12 I don't recall the exact figure.

13 Q. So both the truck and the trailer were totaled?

14 A. Yes.

15 Q. So in fact Trans-Spec only sold 21 trucks to
16 Republic Capital Corporation; it didn't sell 22?

17 A. It sold 20.

18 Q. Which was the other one that it didn't sell to
19 them?

20 A. I'm sorry, I don't know the number, but I still
21 have that truck also.

22 Q. Why was that second truck not sold to
23 Republic Capital?

24 A. It was also damaged in a delivery incident in

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01 MR. GRUNERT: I assume that it's understood that
02 the stipulations we had at the start of the first
03 deposition, the first day of this 30(b)(6) deposition,
04 remain in effect.

05 MS. REIMER: Yes.

06 MR. GRUNERT: That was understood; right?

07 MS. REIMER: Yes.

08 BY MR. GRUNERT:

09 A. What's that?

10 Q. That objections except as to the form and all
11 motions to strike are reserved until the time of
12 trial.

13 A. Oh, I'll stipulate that.

14 Q. My question was what do you plan to do with the
15 truck that was involved in the August 2005 delivery
16 incident?

17 A. Without being coy, they're perfect. One of them
18 is a very easy fix, which I won't. And the other one
19 would be an excellent donor for a glider kit, which is
20 a new truck with that particular motor. But the
21 problems of the C-12 engine is something that I just
22 won't deal with anymore. So I will probably sell them
23 for components.

24 Q. So the truck that's involved in the August 2005

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01 Holden.

02 Q. When was it damaged?

03 A. In August.

04 Q. August 2005?

05 A. Yes.

06 Q. What kind of damage did it sustain?

07 A. It just has cab damage on the driver side.

08 Q. When you say a delivery incident, what was the
09 nature of the incident?

10 A. The trailer failed, a pin on the trailer, and the
11 trailer leaned and took the cab with it.

12 Q. Did it tip over?

13 A. Yes.

14 Q. And is it your intention to repair that truck and
15 deliver it to Republic Capital Corporation at a later
16 time?

17 A. No.

18 Q. What do you plan to do with that truck?

19 A. The truck still -- the truck drives, the truck
20 runs. Neither one of them have a broken flywheel
21 housing, by the way, after the accident. The first
22 was severe. The second one was slight but neither one
23 of them have damaged flywheel housings, broken,
24 cracked, loosened, or anything else.

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01 delivery incident, you are going to sell that truck
02 for components parts; is that what you plan to do?

03 A. I probably will, yes. I'm not doing anything at
04 this particular moment.

05 Q. You're not using it in your business?

06 A. No. I could -- well, I have to repair the cab to
07 drive it and we have new trucks.

08 Q. Do you plan to repair the cab?

09 A. No.

10 Q. So you are simply going to sell it for component
11 parts; correct?

12 A. Probably will, or scrap it.

13 Q. So as a result of that accident in August 2005,
14 Republic Capital Corporation is not paying you what it
15 agreed to pay for that truck if it was delivered?

16 A. Correct.

17 Q. But you don't know the truck number for that
18 truck, the one that was damaged in 2005?

19 A. No, I really don't. We will provide you with
20 that.

21 MR. GRUNERT: Nancy, I want to put on the record
22 that I would like that truck not to be scrapped or
23 sold for parts until I can determine whether that
24 truck might be appropriate for inspection and testing

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01 by Caterpillar.

02 MS. REIMER: Okay. Is that okay?

03 THE WITNESS: That's fine. Can I rent it to you?

04 MR. GRUNERT: I'll discuss it with your counsel.

05 (Exhibit No. 27 marked for identification.)

06 Q. Exhibit 27 looks like a Automobile Loss Notice that

07 R. seems to pertain to a accident involving

08 Truck 8400 that occurred on July 24, 2002, is that

09 what that is?

10 (Witness reviews document.)

11 A. Yes.

12 Q. And I see in Exhibit 2 on the page pertaining to

13 July 2002 that Truck 8400 was out of service for the

14 24th, 25th, 26th, and 27th, at least. Am I correct

15 that it was out of service as a result of damage from

16 this accident in July 24, '02?

17 A. Good possibility.

18 Q. Do you have any recollection of what the damage
19 to Truck 8400 that was caused in that accident was?

20 A. The driver hooked up improperly. And to make

21 sure that we have no liability, what we'll do is

22 remove the fifth wheel and rebuild and then reapply it

23 once it's rebuilt. So in case it wasn't the driver's

24 fault. It's easy to blame the driver, but if it

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01 Q. And Exhibits 5 and 6 on their face, one of them
02 pertains to engines delivered before January 2000, and
03 the other pertains to ones delivered after January
04 2000 or in and after January 2000; correct?

05 A. This is just No. 5.

06 Q. No, they're five and six. One of them pertains
07 to deliveries I believe made after 1997, and one of
08 them pertains to deliveries made after January 1,
09 2000; correct?

10 A. Yes.

11 Q. Did Trans-Spec receive the document that was
12 marked Exhibit 5 which is effective with sales to the
13 first user on or after January 1, 1997? Did it
14 receive that document or a copy of it with the
15 Sterling Trucks that it took delivery of in December
16 1999?

17 A. I believe it did.

18 Q. And the Exhibit 6 which pertains to sales to the
19 first user after January 1, 2000, did it receive a
20 copy of that with the Sterling Trucks that it took
21 delivery of in January 2000?

22 A. I believe it did.

23 Q. Other than Exhibits 5, 6, and 3 to your
24 individual deposition back in May, and I'm showing you

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01 happened again, you know that we'd certainly be in
02 trouble.03 Q. Sure. Do you remember, other than damage to the
04 fifth wheel, whether there was any other damage to
05 Truck 8400 as a result of that event?06 A. I don't remember, but I wouldn't think so. We've
07 had that happen before. Right on our own property it
08 generally happens. A truck can't hook up, the driver
09 pulls out, the trailer falls down.10 Q. Let me show you Exhibits 5 and 6 to your
11 individual deposition which was taken in May of this
12 year. Did Trans-Spec receive copies of either of
13 those documents in connection with its acquisition of
14 the Sterling Trucks?

15 A. Yes.

16 (Witness reviews documents.)

17 Q. Did it receive both of them? Let me rephrase --
18 let me ask the question a little differently.19 Trans-Spec received some of the Sterling
20 Trucks in December 1999; right?

21 A. Yes.

22 Q. And it received some of the trucks in
23 January 2000; correct?

24 A. Yes.

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01 what was Exhibit 3, did Trans-Spec receive in
02 connection with the delivery of these Sterling Trucks
03 any other documents that you considered to be
04 Caterpillar warranties on the engines?05 A. We just received the Sterling warranty which
06 involved Caterpillar. And the only Caterpillar
07 exclusive warranty was the warranty presented
08 Southworth-Milton, then the warranties for
09 transmissions, Rockwell, and for this and for that.
10 Everything had its own warranty.11 Q. There was a transmission warranty from the
12 transmission supplier?

13 A. Yes.

14 Q. And there was a Sterling warranty that covered
15 the trucks?16 A. It covered everything for the first two years, I
17 think.18 Q. And then there were Exhibits 5 and 6 which you
19 understood to be Caterpillar warranties covering the
20 engines; right?

21 A. Yes.

22 Q. And there was Exhibit 3 which is a document you
23 signed or that Mr. Lind signed for Trans-Spec. And I
24 don't want to debate whether that is a warranty or a

00077

01 A. Well, he was -- he had new C-13 engines, and he
02 was telling me they were having a lot of problems.

03 Q. But he didn't mention specifically flywheel
04 housings?

05 A. I didn't want to get in a conversation with him.

06 Q. So the other owners or lessees of trucks that you
07 understand from sources other than from your attorneys
08 have had problems with C-12 flywheel housing failures
09 are R & M Leasing?

10 A. Information came from Tri State Freightliner.

11 Q. And AMI which came from Mr. Cardoza or
12 Calderbank?

13 A. Correct.

14 Q. And then there was the Construction Materials
15 Company which had at least one engine that experienced
16 flywheel housing problems; correct?

17 A. Correct.

18 Q. Have you spoken with anyone from Construction
19 Materials about the flywheel housing problems it
20 experienced?

21 A. Myself, no.

22 Q. Has anyone from Trans-Spec, not your lawyers, but
23 any actual employee of Trans-Spec or of TS Truck
24 Service spoken with Construction Materials about its

00079

01 Q. Take a look at Exhibit 6 again, please, because I
02 want to get some detail as to some entries in here.

03 And on the first page, in this section related to
04 Truck 6000 there is reference to replacement of the
05 flywheel housing on that truck on December 16, 2003.

06 And under the letters "N," slash, "A" in the column
07 headed Location of Service. There is a reference made
08 to the black binder of materials that you've supplied
09 to your attorneys.

10 I've looked in the black binder to the
11 extent that it was provided to me with respect to
12 Truck 6000, and I don't find any reference to a repair
13 of a flywheel housing on 12/16/03. And I'll hand you
14 Exhibit 9 to your individual deposition just so that
15 you'll see what I mean. And I'm also going to hand
16 you Exhibit 7 to your individual deposition, and I'm
17 going to ask you whether -- it may be that that entry
18 is in error, and that the 12/16/03 repair was not to
19 Truck 6000 but to Truck 6100.

20 (Witness reviews document.)

21 Q. And to further help you with that, I'm going to
22 hand you Exhibit 10 to your individual deposition
23 which indeed contains the truck service repair order
24 for 12/16/03.

00078

01 trucks?

02 A. Yes.

03 Q. What information have you obtained, again, not
04 through your attorneys but through TS Truck Service or
05 Trans-Spec employees? What information have you
06 obtained about the problems that company has had?

07 A. They've had other failures.

08 Q. Do you know how many?

09 A. No. Again, it would require us giving them
10 information. It's something we're not willing to do
11 at this time.

12 Q. Do you know how old the truck or trucks were when
13 the failure occurred?

14 A. I believe the first one was out of warranty.
15 That's as far as I know.

16 Q. Any other owners or lessees of trucks with C-12
17 engines who have had flywheel housing problems as far
18 as you know based on information you got from sources
19 other than your attorneys?

20 A. Anybody that knows anything of our problem, they
21 say, "Oh, everybody's having problems with those."
22 And again, I don't discuss it with them. I really
23 don't want to know. I want my problem taken care of,
24 not other people's.

00080

01 A. You're overwhelming me here.

02 Q. I just don't want to be unfair to you.

03 A. No, I appreciate that. This is all 6100 here?

04 Q. Yes, I've given you the black binder excerpts for
05 both Truck 6000 and 6001 because I'm simply interested
06 in finding out whether there were flywheel
07 replacements on both of them that day or just one of
08 them. Because I don't find a repair record in your
09 records or in your black binders for Truck 6000 on
10 that day.

11 A. Somehow that doesn't surprise me. It's a
12 possibility -- it came from someplace, I would assume.
13 All I can do is it's an assumption, and it can go
14 either way.

15 Q. Well, take a look at Exhibit 7 from your
16 individual deposition and someone wrote 12/16/03, sort
17 of in the area next to --

18 A. What number is that?

19 Q. Exhibit 7. It's that single sheet you're at and
20 if you look down at the bottom, you'll see there's a
21 reference to a repair on 12/16/03, but it's ambiguous
22 as to whether it was Truck 6000 or 6100.

23 A. That date is when we had sketchy records. That
24 particular winter we had numerous, like half a dozen

00081

01 of the same exact problem patching them. We had
02 imported mechanics from the Shrewsbury location that
03 didn't have the best records skills.

04 Q. Do you know whether or not Truck 6000 had a
05 flywheel housing replaced on or about
06 December 16, 2003?

07 A. Absolutely sure, no, I don't. We did make it
08 out. So I'm going to go by what we have here.

09 Q. Now, moving down on Exhibit 6, with respect to
10 Truck 6000 the next entry relating to work done by
11 Trans-Spec with respect to the flywheel housing issues
12 was when you installed the supplemental transmission
13 support in April 2004; right?

14 A. Excuse me, on or around that date, Truck No. 6000
15 was out of service.

16 Q. On or around what date?

17 A. 12/16/03. Around that period we were inspecting
18 these trucks every evening and shining a flashlight to
19 try to find a space between the block and the
20 flywheel. And they would remove the transmission,
21 take out the flywheel, tighten them for flywheel
22 housing bolts before we had damage, and then tighten
23 them back up and send the truck out. And it might
24 last, you know, a week or two before it happened

00083

01 of that; correct?

02 A. You're speculating that I'm not.

03 Q. Sir, are you speculating as to it or not?

04 A. Am I speculating? I would venture to say they
05 found a problem with the flywheel housing, and
06 tightened the flywheel housing up or replaced it or
07 did something, and then gave you the record of it.

08 Q. Even though it's not mentioned in any of the
09 records, it's the flywheel housing. Is that what
10 you're saying?

11 A. Absolutely.

12 Q. Oh, all right. And it only took them one day to
13 do it?

14 A. No, it was a couple of days that it could have
15 been in there. It's a couple of days between working
16 weekends. It wouldn't show every -- it wouldn't show
17 a weekend truck being in or out of service.

18 Q. And so if there's no record of it for any of
19 those days, that's not important; correct?

20 MS. REIMER: Objection.

21 A. Again, we're patching, trying to keep these
22 trucks running so we could survive.

23 Q. Are there any of these repair records that you
24 feel comfortable saying were not caused by flywheel

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01 again, but that's how we were getting by or attempting
02 to get by. I would suggest that it was probably an
03 occasion like that where the truck was only down a
04 couple of days, and that's what happened.

05 (Exhibit No. 29 marked for identification.)

06 Q. What is Exhibit 29?

07 (Witness reviews document.)

08 A. 12/8 to Truck No. 6000 repair order, the first
09 one. Truck No. 6000, the second one.

10 Q. What's the date on the second one?

11 A. 12/15.

12 Q. That's a date that according to Exhibit 2,
13 Truck 6000 was out of service; correct?

14 A. Yes.

15 Q. And what was the repair done that day?

16 A. "Engine oil getting all over brakes making it
17 difficult to stop."

18 Q. No mention of flywheel housings; correct?

19 A. Maybe that was where it was coming from.

20 Q. No reference to flywheel housings in that repair
21 order or the ones earlier in time in that packet or in
22 the ones later in time in that packet; correct?

23 A. It doesn't have the solution for this either.

24 Q. So you are speculating as to what was the cause

00084

01 housing problems? Are they all caused by them?

02 A. But no, I have. I have, you know, said that a
03 couple of them couldn't be -- I agreed with you, you
04 know.

05 Q. So the records from mid-December 2003, even
06 though none of them mention the flywheel housing, you
07 have inferred that that was caused by flywheel housing
08 problems?

09 A. Yes.

10 Q. Good enough. Apart from the December 2003
11 flywheel housing failure that's not mentioned in
12 Trans-Spec's records, is it fair to say that the next
13 time Trans-Spec did any work on that truck related to
14 flywheel housing problems was in April 2004, when it
15 installed the additional transmission support that
16 Sterling had provided to it?

17 A. This is still Truck No. 6000 were talking about?
18 (Witness reviews document.)

19 Q. Yes.

20 A. You're saying just the flywheel housings you're
21 talking about?

22 Q. Sir, I'm interested in work Trans-Spec did on the
23 truck that was related to a flywheel housing failure.

24 A. On 4/1 they had a -- they say they have a leaky

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01 or a broken structure -- take down --

02 Q. Sir, my question is what work Trans-Spec did.

03 I'm not asking about work that was done by Minuteman

04 or Southworth or Tri State or anyone else.

05 A. Just Trans-Spec?

06 Q. Trans-Spec.

07 A. From what's here from the records it indicates

08 that on 4/30 we installed the spring kit for the

09 transmission.

10 Q. And that work was not as a result of a flywheel

11 housing failure. That work was done in hopes of

12 preventing future failures; correct?

13 A. That's correct.

14 Q. And the truck was not listed as out of service

15 that day as a result of that work in Exhibit 2;

16 correct?

17 A. That's correct. We have two shifts, two

18 mechanic shifts.

19 Q. Now, with respect to the 12/16/2003 work, who did

20 the work that day that you say involved replacing the

21 flywheel housing?

22 A. That's really impossible for me to say.

23 Q. How many hours did that work involve?

24 A. That would normally only be about a 16-hour job.

00087

01 Q. So the first flywheel housing work that Trans-

02 Spec did on Truck 6100 was done 12/16/03?

03 A. It appears -- it looks like that, yes.

04 Q. And then the next work that Trans-Spec did

05 relating to flywheel housing wasn't until April 2004

06 where again you put in that transmission support that

07 Sterling had supplied in hopes of preventing future

08 flywheel housing problems; right?

09 A. Yes.

10 Q. So Trans-Spec performed a total of one flywheel

11 housing-related piece of work on Truck 6100 prior to

12 installing its transmission support that Sterling had

13 provided; correct?

14 A. Yes.

15 Q. By the way, when Trans-Spec installed the

16 transmission support, did that cause damage to its

17 real estate, doing that operation?

18 A. No.

19 Q. The next entry I want to talk about in deposition

20 Exhibit 6 is for Truck 6200. And the flywheel

21 housing-related work I see related to Truck 6200 is in

22 April 2004, putting in the transmission support that

23 Sterling had provided to you; is that accurate?

24 (Witness reviews document.)

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01 Q. But what about on that particular occasion?

02 A. I have no idea.

03 Q. And what parts were replaced in connection with

04 the work on 12/16/03?

05 A. There wouldn't necessarily have to be any parts

06 replaced.

07 Q. So you don't know whether any were or not;

08 correct?

09 A. No, I don't.

10 Q. Now, moving down to the section on the first page

11 of Exhibit 6 related to Truck No. 6100. There is a

12 reference to Trans-Spec having done work on Truck 6100

13 on June 30, 2003; correct?

14 A. Yes.

15 (Witness reviews document.)

16 Q. And the record of that work is contained in

17 Exhibit 10 to your individual deposition which was the

18 so-called black binder entry for Truck 6100; true?

19 A. True.

20 Q. And it doesn't say anything about work on

21 flywheel housing or flywheel housing bolts, or any

22 observation of anything wrong with the flywheel

23 housing or flywheel housing bolts; correct?

24 A. Not on that particular one, no.

00088

01 A. If you read into these, I see a possibility that

02 that's true. It could very well be true. On 2/27,

03 all this damage to that engine, if Minuteman replaced

04 the block like they did on a few, two or three

05 different trucks, because of the flywheel housing

06 problems, then that wouldn't have been done at the

07 same time automatically.

08 Q. First of all, sir, I'm asking about work Trans-

09 Spec did.

10 A. Oh, I'm sorry. All right. Okay. Trans-Spec

11 did. It looks like "4/30 take down the drive shaft,

12 tap out, tap out both holes, install spring kit."

13 Q. Again, that was not done as a result of a

14 flywheel housing failure but in hopes of preventing

15 future failures; correct?

16 A. Correct.

17 Q. And in fact there are no subsequent flywheel

18 housing failures mentioned in Exhibit 6 with respect

19 to Truck 6200; right?

20 A. Right.

21 Q. In fact, there are no flywheel housing failures

22 with respect to Truck 6200 mentioned in Exhibit 6;

23 right?

24 A. Well, I said this was accurate and not complete.

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01 Q. There are no flywheel housing failures mentioned
02 in Exhibit 6; right?

03 A. Mentioned in Exhibit 6?

04 Q. With respect to Truck 6200.

05 A. Yes.

06 Q. Now, with respect to Truck 6300, the first work
07 by Trans-Spec that is mentioned -

08 (Witness reviews document.)

09 A. It looks like 10/27/03.

10 Q. Now, Exhibit 6 with respect to Truck 6300
11 identifies a flywheel housing replacement on
12 October 27, 2003, and another on November 17, 2003;
13 right?

14 A. Yes.

15 Q. But that in fact was all a single repair episode
16 that involved just a single flywheel housing failure
17 and a single flywheel housing replacement; correct?

18 A. I would have to look. You're looking at the
19 truck of service, I presume?

20 (Witness reviews document.)

21 Q. That in reality was a single failure and a single
22 repair; correct?

23 A. This looks like it could possibly be a -- it
24 looks like it is, because the truck was out of service

00091

01 A. They came from Sterling.

02 Q. Now, with respect to Truck 6700, the only
03 flywheel housing-related work that Trans-Spec did on
04 that truck was when it put in the transmission support
05 in April 2004; correct?

06 A. I would say not.

07 Q. Well, do you see anything else in there where
08 Trans-Spec did flywheel housing-related work on Truck
09 6700?

10 A. That would have meant from 2/11/03 -- sorry. I
11 withdraw that. I was onto the next truck saying it
12 looked like a clutch had been replaced three times in
13 a matter of a few months, but I had it wrong.

14 Q. So is it true that Trans-Spec did no flywheel
15 housing-related work on Truck 6700 other than when it
16 put in the additional transmission mount that had been
17 supplied to it by Sterling in April of 2004?

18 MS. REIMER: Objection.

19 A. Exhibit No. 6 doesn't reflect on any other
20 flywheel housing replacements on 6700.

21 Q. Can you identify any other flywheel housing-
22 related work done on that truck by Trans-Spec?

23 A. At this particular time, no.

24 MS. REIMER: Before April of 2003?

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01 all that time for that one flywheel housing failure.

02 Q. So with respect to Truck 6300, Trans-Spec
03 repaired a single flywheel housing failure; right?

04 A. It very well could be. We couldn't get the darn
05 things. So we were probably waiting to get one.

06 Q. My question, sir, is that Trans-Spec repaired a
07 single flywheel housing failure on there, not two
08 flywheel housing failures as indicated in Exhibit 6?

09 A. It appears on Exhibit 6 that Truck No. 6300 had
10 one failure and not two, and it was just ongoing
11 waiting for parts or for whatever reason.

12 Q. And then in April 2004 Trans-Spec put in a
13 transmission support that Sterling had supplied;
14 right?

15 A. Yes.

16 Q. So there were only those two items of flywheel
17 housing-related work on Truck 6300 that Trans-Spec
18 did; correct?

19 A. Yes.

20 Q. The transmission support and the related hardware
21 that Trans-Spec put it in in April 2004, was that
22 supplied to Trans-Spec at no cost?

23 A. The parts were no cost.

24 Q. And they came from Sterling, did they?

00092

01 Q. Other than the April 2003 work -- April 2004, I'm
02 sorry, which is the only apparent flywheel housing-
03 related work listed in Exhibit 6 that was done by
04 Trans-Spec. Was there anything else that Trans-Spec
05 did?

06 A. Yes.

07 Q. What?

08 A. Trans-Spec had between six and ten mechanics at
09 all times during that period. And according to these,
10 the guy just played cards all day. What did they do?
11 Well, you know there was something else. And can I
12 prove it right now? No. Exhibit No. 6 does not show
13 anything else done to that truck by Trans-Spec.

14 Q. What I want you to do is to tell me the date of
15 any other flywheel housing-related work that was done
16 on Truck 6700 that is not reflected in Exhibit 6?

17 A. I can't do that.

18 Q. Now, with respect to Truck No. 6800, on
19 May 6, 2004, Trans-Spec again put in a transmission
20 support that had been supplied to it by Sterling;
21 correct?

22 A. Yes.

23 Q. Other than that work Trans-Spec did no flywheel
24 housing-related work on Truck 6800; correct?

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01 May 6, 2004, Trans-Spec put in the additional
02 transmission support that Sterling had supplied;
03 correct?

04 A. Yes.

05 (Witness reviews document.)

06 Q. Other than that, Trans-Spec never did any
07 flywheel housing-related work on Truck 7400; correct?

08 A. If this document is accurate, but as I stated
09 it's not complete. So the records we -- we don't have
10 records to substantiate that at this time.

11 Q. Are you able to identify any flywheel housing-
12 related work that Trans-Spec did on Truck 7400 other
13 than the installation of the transmission support on
14 May 6, 2004?

15 A. No.

16 Q. With respect to Truck 7500, in December 2003
17 Trans-Spec did some flywheel housing-related work;
18 true?

19 A. It looks like that, yes.

20 Q. And referring to your Exhibit 18 at your
21 individual deposition, there's a repair record for
22 that date, December 10, 2003; correct?

23 A. Yes.

24 (Witness reviews document.)

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01 of the flywheel housing failures that you were
02 experiencing was that the bolts would gradually
03 loosen. Maybe they would break; maybe they wouldn't.
04 But as the bolts loosened, the flywheel housing itself
05 would loosen, and sometimes the flywheel housing would
06 be damaged; true?

07 A. It would appear that way.

08 Q. And sometimes the flywheel housing would not be
09 damaged because the loosening was discovered early
10 enough; true?

11 A. True. I know of one that Southworth said was
12 fine and put it back together and sent it back to us.
13 So, yes.

14 Q. And so the fact that on December 10, 2003, your
15 repairmen found a loosened flywheel housing, it
16 doesn't mean that the housing needed to be replaced.
17 It might have just been tightened back up; correct?

18 A. In some cases when we couldn't get flywheels, it
19 should have been replaced. We've even gone so far as
20 to weld them and put them back just to make a truck
21 run for a few days. And these are the ones that our
22 records are scarce. But, yes, it's very true from
23 what you're saying.

24 Q. In any event, you did work on December 10, 2003,

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01 Q. And that repair record memorializes the fact that
02 the flywheel housing was found to be loose that day;
03 right?

04 A. That's what it says, yes.

05 Q. The flywheel housing wasn't actually replaced
06 though; right?

07 A. According to this it was not.

08 Q. That repair record from December 10, 2003, part
09 of it is a parts list of items that were replaced on
10 that truck?

11 A. Yes.

12 Q. And it doesn't reference flywheel housing or
13 flywheel housing bolts; true?

14 A. True.

15 Q. So what your repairmen must have done that day
16 was retighten the flywheel housing bolts; correct?

17 A. Knowing their clerical abilities, it might have
18 been something sitting beside them and they just put
19 another one on. It could have been one of the ones
20 that we had repaired at AK Machine, purchased from Mid
21 West Diesel. It's just -- it's hard to say.

22 According to this there was no flywheel replacement.

23 MS. REIMER: Objection.

24 Q. Well, it's true, isn't it, that the progression

00100

01 related in part at least to the flywheel. And then
02 the next flywheel housing work that Trans-Spec did on
03 that Truck was in April 2004 when it put in the
04 transmission support that Sterling had supplied; true?

05 A. According to this document, yes.

06 Q. So one episode of flywheel housing-related work
07 on that truck done by Trans-Spec; correct?

08 A. Yes.

09 Q. Now, with respect to Truck No. 7600, do you see
10 the first entry refers to Southworth-Milton doing work
11 on June 15, 1998?

12 A. Yes.

13 (Witness reviews document.)

14 Q. And that was a flywheel housing failure; right?

15 A. Yes.

16 Q. You didn't have Truck 7600 with a C-12 engine in
17 it in June 1998, did you?

18 A. I wouldn't think so.

19 Q. So that entry reflects work Southworth-Milton did
20 on some other truck years before you acquired or more
21 than a year before you acquired the trucks involved in
22 this case; true?

23 A. We have a 7600. Maybe the date's wrong or not
24 the truck.

00109

01 A. They were paid by Caterpillar.

02 Q. So the 7/14/03 flywheel housing failure in fact
03 was covered by Caterpillar?

04 A. That's correct.

05 Q. But that was the last one that was covered by
06 Caterpillar until after your meeting with Troy
07 Guidotti in June 2004; is that true?

08 A. All I have is my recollection which isn't --
09 dates aren't my strong point. It sounds like it's
10 accurate.

11 Q. Well, let me ask it a different way. Did Trans-
12 Spec ever pay Colony Trucks or Tri State or Minuteman
13 for repair of a flywheel housing failure?

14 A. Accessories, yes.

15 Q. But for repair, labor, and expense for repairing
16 the flywheel housing assembly itself, did Trans-Spec
17 ever pay any of those dealers for the work?

18 A. Not for the flywheel housing itself, no.

19 Q. After you learned in July 2003 that these were
20 not going to be covered by Caterpillar anymore under
21 warranty, you no longer delivered the trucks to a
22 dealership for repair; true?

23 A. That's true.

24 Q. Now, on Truck 7600, on 5/2004, Trans-Spec

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01 Q. And Trans-Spec never did any flywheel housing-
02 related work on that truck except for putting in this
03 transmission mount which was intended to hopefully
04 prevent future problems with the flywheel housing;
05 correct?

06 MS. REIMER: Objection.

07 A. According to this document, yes.

08 Q. And all of the flywheel housing work that was
09 done by dealerships on that truck was reimbursed by
10 Caterpillar; true?

11 A. Yes.

12 Q. Moving to Truck 7800, on April 20, 2004, Trans-
13 Spec installed a transmission mount that had been
14 supplied to it by Sterling; true?

15 A. True.

16 Q. Before that date Trans-Spec did not do any
17 flywheel housing-related work on that truck; correct?

18 A. The documents that we need to substantiate that
19 are not in front of me. According to this document
20 that's correct.

21 Q. Well, are you able to identify any flywheel
22 housing-related work that Trans-Spec did on that truck
23 other than installing this transmission mount in
24 April 2004?

00110

01 installed a transmission support that had been
02 supplied by Sterling; correct?

03 A. Correct.

04 Q. But other than that work, Trans-Spec itself never
05 did any flywheel housing work on that truck; correct?

06 MS. REIMER: Objection.

07 A. Although not complete, Supplement No. 6 indicates
08 that Trans-Spec hasn't done anything else to that
09 truck.

10 Q. So in fact, other than the installation of the
11 transmission support, all of the flywheel housing-
12 related work that was done on Truck 7600 was
13 reimbursed by Caterpillar; true?

14 A. Yes.

15 MS. REIMER: Objection.

16 Q. With respect to Truck 7700, on May 3, 2004,
17 Trans-Spec put in a transmission mount supplied to it
18 by Sterling; correct?

19 A. Correct.

20 Q. Before that there had been no flywheel housing
21 failures on that truck; correct?

22 MS. REIMER: Objection.

23 A. According to No. 6, that's correct.

24 (Witness reviews document.)

00112

01 A. No, not without additional documents.

02 Q. Let me show you Exhibit 21 to your individual
03 deposition which was the so-called "black binder"
04 relating to Truck 7800. And tell me what you find in
05 there memorializing flywheel housing work done by
06 Trans-Spec on Truck 7800.

07 (Witness reviews documents.)

08 A. 5/26/04, front structure and drop valve and
09 flywheel housing.

10 Q. That's not work that Trans-Spec did; correct?

11 That was work that was done by Tri State Truck Center;
12 true?

13 A. There's nothing here to indicate that we've done
14 anything else to that truck.

15 Q. And in fact the work that Tri State did on
16 5/26/04, Tri State did not identify that a flywheel
17 housing problem was involved in that work, did it?

18 A. What date was that?

19 Q. 5/26/04, the work you just referenced that was
20 done by Tri State on Truck 7800.

21 A. I don't even see that date on here with anything
22 that Tri State did.

23 Q. Well, we'll find it for you, sir. Maybe it's not
24 in that --

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01 A. No, 5/26/04. I didn't see the date on it, but I
02 saw the work. "Gear case and joint block gasket
03 leaking." That's all it says on 5/26/04. It does not
04 refer to a flywheel housing. Is that what you're
05 trying -- is that what you want me to say?

06 Q. Well, I'm trying to find out whether the work
07 done on 5/26/04 that you made reference to was
08 flywheel housing-related or not. Just to help you
09 out, let me hand you a Tri State invoice that appears
10 to relate to that work which in fact was completed on
11 May 19, 2004, rather than May 26th; right?

12 A. Yes.

13 Q. And it wasn't flywheel housing-related; correct?

14 A. No.

15 Q. No, it was not?

16 A. No, it was not.

17 Q. So in fact, if Exhibit 6 is correct, there were
18 no flywheel housing failures on Engine 7800; true?

19 A. According to this document which is supplement to
20 Document No. 6, there is no -- there has been no
21 failures on that truck. I do not have the paperwork
22 to substantiate the claim that there was.

23 Q. Are you able to identify any specific flywheel
24 housing-related failures on Truck 7800?

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01 Q. What is your basis for saying that you had to
02 repair every truck?

03 A. I saw the trucks broken.

04 Q. Did you see every single one of the trucks with a
05 flywheel house -- did you see every single one of the
06 Sterling trucks with a broken flywheel housing on it
07 with your own eyes?

08 A. I saw a Sterling truck not being operated because
09 I was told that it had a broken flywheel housing bolt,
10 or it loosened up, or broken housing or something, a
11 reason it had to come apart to be repaired, tightened,
12 replaced.

13 Q. But you can't say that any one of those trucks
14 that you saw with your own eyes was Truck 7800; right?

15 A. No, but I'm sure one of my employees can.

16 Q. Who is that employee?

17 A. I will find out.

18 Q. Has any such employee specifically told you, to
19 date, that Truck 7800 was being repaired for a failed
20 flywheel house?

21 A. I really don't recall about that specific truck.

22 Q. Now, with respect to Truck 20 -- I'm sorry, with
23 respect to Truck 7900 -- and again, focusing just on
24 work Trans-Spec itself did. Trans-Spec, on

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01 A. I know that every truck has had at least one
02 flywheel housing replaced.

03 Q. Well, when was the flywheel housing on 7800
04 replaced?

05 A. I can't tell you when.

06 Q. Who replaced it?

07 A. If it wasn't a dealer then it had to have been
08 us.

09 Q. But as you sit here today, you can't give me any
10 details whatsoever of the flywheel housing failure
11 that you say occurred on Truck 7800?

12 A. You know what we should have done, we should have
13 listed serial numbers, if they even have them, on
14 flywheel housings versus engines.

15 Q. I just want to know whether you can give me any
16 detail whatsoever of any flywheel housing failure that
17 occurred on Truck 7800?

18 A. Not at this time.

19 Q. What is your basis for saying that a failure
20 occurred on that truck?

21 A. Because it occurred on every truck.

22 Q. What is your basis for saying that it occurred on
23 every truck?

24 A. Because we had to repair them.

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01 April 21, 2004, put in a transmission support that had
02 been supplied by Sterling; true?

03 A. Yes.

04 (Witness reviews document.)

05 Q. Other than that work, Trans-Spec did not itself
06 perform any flywheel housing-related work on Truck
07 7900; correct?

08 A. According to document -- supplement to Document
09 No. 6, it doesn't show any indication where any other
10 work was done by Truck Service on flywheel housings on
11 that truck.

12 Q. And to the extent that flywheel housing work was
13 done on that truck by, for example, Tri State Truck
14 Center or by Southworth-Milton, that work was paid for
15 by Caterpillar; true?

16 A. Yes.

17 Q. Moving along to Truck 8000. This is the one that
18 had a couple of rollover accidents?

19 A. Yes.

20 Q. In September 2003, there is an entry indicating
21 that Trans-Spec found the flywheel housing broken and
22 that the truck was out of surface; true?

23 A. According to this document, yes.

24 Q. And there's also an indication on October 16,

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01 2003 that Trans-Spec was doing, among other things,
02 flywheel housing-related work; true?

03 A. Yes.

04 (Witness reviews document.)

05 Q. What I'm interested in knowing is whether those
06 two entries in fact relate to a single flywheel
07 housing failure, can you tell me that? If it helps I
08 can show you Exhibit 23 to your individual deposition
09 which includes what I believe are Trans-Spec repair
10 orders, dated 9/29/03 and 10/16/03.

11 A. I have it out of service until 10/13. From 9/28
12 or something like that. No. What dates are you --

13 Q. My question is whether the flywheel housing
14 failures identified in Exhibit 6 as occurring on
15 9/23/03 -- I'm sorry, as occurring on 9/29/03 and
16 10/16/03 to the engine in Truck 8000, whether those
17 two entries in Exhibit 6 in fact refer to a single
18 flywheel housing failure that was repaired between
19 September 29, '03, and October 16, '03?

20 A. It's possible. The truck wasn't out of service
21 every day, though.

22 Q. Well, in fact, the page of Exhibit 2 that covers
23 the month of October 2003, has no entries at all on
24 October 14 and 15; right?

00119

01 housing that was installed on a truck. It fits this
02 description. It was installed, the truck was ready to
03 go, and the flywheel was hitting the flywheel bolts
04 when we went to start it. So it turned out that the
05 after-market flywheel housing that we had to purchase
06 because there wasn't any in existence, was a few
07 thousandths thicker than a Caterpillar one.

08 Therefore, the bolts -- the flywheel housing
09 had to be removed and special bolts with shallow heads
10 had to be installed so that the flywheel would clear.
11 So that would represent after-market flywheel with two
12 repairs in a short period of time. Just labor. I
13 mean, it's not -- but that would explain --

14 Q. There's a single housing failure that accounts
15 for the two entries in Exhibit 6: one dated 9/29/03,
16 and the other dated 10/16/03.

17 MS. REIMER: Objection.

18 A. But a lot of days evolved.

19 Q. I understand there was at least two weeks of work
20 involved, but it was one housing failure.

21 A. It appears that way, yes. You know, somebody's
22 going to ask you if it's just one deposition that went
23 on for two weeks or if it was two. You'd better keep
24 good records.

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01 A. Right.

02 Q. And that means that you have no record showing
03 whether or not it was out of service those two days?

04 A. Unless it was a weekend.

05 Q. You have no dispatch records or other records
06 indicating whether or not Truck 8000 was in service on
07 the 14th and 15th; true?

08 A. True.

09 Q. But you do know that you have a repair record
10 dated October 16, '03, prepared by your own company
11 that indicates that a flywheel housing, remanufactured
12 flywheel housing, was installed into the truck that
13 day along with other parts; correct?

14 A. Correct.

15 Q. And you do know that on September 29, 2003, you
16 have a repair record prepared by your own company that
17 says the truck is out of service because of a broken
18 flywheel housing, and there's no indication that a
19 flywheel housing was repaired or replaced that day;
20 true?

21 A. I have the answer to that.

22 Q. What is the answer?

23 A. The answer to that is when you said
24 remanufactured, there was an after-market flywheel

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01 Q. And when you say that was an after-market
02 flywheel housing, do you mean it was a non-Caterpillar
03 part?

04 A. That's right.

05 Q. The next entry in Exhibit 6 is the one where on
06 3/8/2004, after Truck 8000 had been out of service
07 with collision damage for about a month and a half,
08 where Trans-Spec again replaced the flywheel housing;
09 correct?

10 MS. REIMER: Objection as to form.

11 A. Truck number what?

12 Q. Truck 8000.-

13 A. Okay, we're still on 8000. Okay. 6/11.
14 (Witness reviews document.)

15 Q. On 3/8/04, Trans-Spec replaced the flywheel
16 housing on Truck 8000 again; correct?

17 A. Yes.

18 Q. So Trans-Spec in fact experienced and repaired
19 two flywheel housings on Truck 8000 in the years 2003
20 and early 2004; true?

21 A. This document appears to reflect that.

22 Q. And in April 2004, Trans-Spec installed the
23 transmission that Sterling supplied; correct?

24 A. Yes.

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01 Where do you get the information that a flywheel
02 housing repair was done on 9700 in October 2003?
03 What's the source of that information? I'll show you
04 the so-called "black binder" related to Truck 9700.

05 A. Somehow I knew you would. April 29th is one.
06 You're agreeing with that; correct?

07 (Witness reviews document.)

08 Q. April 29, 2004, I'm not there yet, sir. I'm
09 interested in the entry for 10/20/2003.

10 A. I have it backwards. They're not in order.

11 Q. I'm simply interested in knowing what information
12 you have indicating that a flywheel housing was
13 replaced on Truck 9700 on that date.

14 A. 5/29/03?

15 Q. 10/20/03.

16 A. I don't see anything here.

17 Q. If I look at Exhibit 2 for the month of
18 October 2003, I see that Truck 9700 was out of service
19 on the 20th and on the 23rd, but it doesn't appear to
20 have been out of service on the 21st. Would a
21 flywheel housing failure have kept Truck 9700 out of
22 service just for the 20th?

23 A. There's nothing in here -- it's unlikely.

24 Q. So does it appear to you that this entry for

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01 A. I did.

02 Q. On my copy of that document, it is completely
03 blank.

04 A. But if a truck is out of service on Monday -- on
05 Friday and again out of service on Monday, you know,
06 and we're scurrying to keep in business, we have
07 people working weekends. We have a Saturday shift.
08 We have a Sunday shift.

09 Q. Let me start again. Look at the entry for
10 10/21/2003 in Exhibit 2. Do you see that?

11 A. For 9700, 10 --

12 Q. Just look at the entry for 10/21/2003 in
13 Exhibit 2.

14 A. 10/20?

15 Q. 10/21/2003. On 10/21/2003, Trans-Spec's records
16 show the Truck 8500 was out of service; correct?

17 A. Oh, you're looking at No. two. Okay, 8500 was
18 out of service. Yes, correct.

19 Q. But it does not indicate that Truck 9700 or any
20 other truck was out of service on 10/21/03; correct?

21 A. Correct.

22 Q. Which causes you to believe that 8500 was the
23 only one out of service that day?

24 A. Or we have a lazy dispatcher. If that falls on a

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01 10/20/2003 is probably an error?

02 A. Probably is.

03 Q. Trans-Spec did do a flywheel housing repair on
04 4/29/04 on Truck 9700?

05 A. Yes.

06 Q. And then on May 4, 2004, it put in the
07 transmission support?

08 A. Yes.

09 Q. So Trans-Spec itself did a single flywheel
10 housing repair on Truck 9700; true?

11 A. Right. Truck No. 9700 -- there's four days here
12 that it -- there's two in between that are missing.
13 That's the 20th through the 23rd. It could be
14 construed that way. That would be enough time to
15 remove -- to tighten up the flywheel housing or
16 replace the flywheel housing, if there's no other
17 damage done.

18 Q. Well, October 22, 2002, is blank in Exhibit 2.
19 So that's simply a day where you don't have any
20 dispatch records to tell you what trucks were out of
21 service; true?

22 A. Well, there was a -- 8700 was listed as out of
23 service.

24 Q. Look for the date 10/22/2003.

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01 weekend, that would make sense.

02 Q. Well, did Trans-Spec repair or did anyone repair
03 Truck 9700 for a flywheel housing problem between
04 October 20, 2003, and October 23, 2002. Can you tell
05 me that or not?

06 A. They repaired something; it was out of service.
07 So they did something to it.

08 Q. But you don't know whether it was a flywheel
09 housing; correct?

10 A. Yes. You didn't bring up the fact that out of --
11 I think it was the 8600 or 9700 that didn't have a
12 spring kit put on the transmission. And every one you
13 mentioned is a spring kit, spring kit, spring kit.
14 That one you didn't mention it. Why is that? Because
15 the record isn't here to prove it. But you know we
16 put one on because every one has one. See, that's
17 just the -- my dilemma.

18 Q. Was there flywheel housing-related work done on
19 Truck 9700 on or about October 20, 2003?

20 A. There's nothing in these records to indicate that
21 anything like that was done to that truck on that
22 date.

23 Q. We don't know whether or not there was flywheel
24 housing problem with Truck 9700 in October 2003; true?

00137

01 well. It's just a little harder to follow it on the
02 previous page.

03 A. Okay.

04 Q. And then the previous page shows Truck 8300 as
05 out of service for the month of January 2003; right?

06 A. Yes.

07 Q. And the previous page shows it out of service for
08 the month of December 2002; correct?

09 A. Yes.

10 Q. But Exhibit 6 does not show any flywheel housing-
11 related problems in December 2002 or January 2003 or
12 February 2003 or March 2003 on Truck 8300; is that
13 correct?

14 A. That there isn't any records of it here?

15 Q. Yes.

16 A. I'm not aware of that but it's possible, yes.

17 Q. Why was Truck 8300 out of service in
18 December 2002 and January 2003, February 2003,
19 March 2002, the entire months?

20 A. 8300 is -- I believe 8300, the flywheel housing
21 was repaired by Minuteman Trucks. The flywheel
22 housing failed and I sent it to Colony Ford. Colony
23 Ford wanted to fix it, except Minuteman was irate.
24 So they made a deal with Al Cardoza to have the truck

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01 Cardozo inspected it and said it needs a block, and
02 Caterpillar wouldn't buy one.

03 So we paid \$21,500 for an engine and
04 installed it ourselves which takes about a hundred
05 hours. The truck was tied up so long because, number
06 one, I couldn't afford it; and number two, I didn't
07 have the manpower and the hours to keep somebody on it
08 to do the repair. The engine was purchased in
09 December of '03.

10 (Witness reviews document.)

11 Q. I've got to tell you, I have seen no records
12 whatsoever from any source of any flywheel housing
13 problem with 8300 in 2002 or early 2003.

14 A. From Minuteman Trucks?

15 Q. From Minuteman Trucks, from Caterpillar, or from
16 Trans-Spec.

17 A. You could be wrong about the number. Why else
18 would a truck be out of service?

19 Q. That's what I'm asking you, sir?

20 A. We had so many trucks down with flywheel housings
21 that it's one of these things where you had to be
22 there.

23 Q. So you can't identify any documents that might
24 tell us why it was out of service in March and

00138

01 towed at Minuteman's expense to Minuteman.

02 So Minuteman fixed it again and the --
03 Minuteman told me that the block should have been
04 replaced at that time, and Al Cardoza told them to
05 patch it. So they did. Shortly thereafter, the truck
06 failed and it needed an engine, and Caterpillar
07 wouldn't supply the engine. So the truck sat while we
08 were trying to get an engine out of Caterpillar. And
09 finally I had to buy an engine out of my own pocket
10 and install an engine. I do believe that's the right
11 truck.

12 Q. The question, though, is as to this lengthy
13 period of time when it was out of service at the end
14 of 2002 and basically the first quarter of 2003. And
15 Exhibit 6 does not identify any flywheel housing
16 problems with that truck at all in 2000 or 2001 or
17 2002 or the first quarter 2003. So what I'm
18 interested in knowing is why at that period of time
19 8300 was out of service?

20 A. I suppose I could be wrong about the number.
21 That's the only one that should have been out of
22 service that length of time, but it would have been
23 done twice in early 2003 by Minuteman Trucks. And
24 then the last time we were going to do it, and Al

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01 February and January and December -- March, February,
02 January 2003, and December 2002?

03 A. Not without me making a phone call. I wish I had
04 known that before we took our break.

05 Q. Similarly, the page of Exhibit 2 related to the
06 month of March 2003 indicates that Truck 8600 was out
07 of service that entire month; do you see that?

08 (Witness reviews document.)

09 A. Yes.

10 Q. But Exhibit 6 does not indicate any flywheel
11 housing problems of any type with Exhibit 6 in early
12 2003. So I'm interested in knowing what caused Truck
13 8600 to be out of service the entire month of March
14 2003?

15 A. The only reason that a truck would be out of
16 service is for one of two reasons -- one of three
17 reasons. The first one being a warrantied item that a
18 dealer would have, the truck being -- repairing it.
19 Number two would be an accident, which you have all
20 the documents. And number three would be flywheel
21 housings. Period. End of story.

22 Q. With respect to Truck 8600, 8300, 8100, 6800, or
23 6200, all of which are indicated in Exhibit 2 as
24 having been out of service for the entire month of

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01 March 2003, can you tell me whether any of those were
02 out of service for flywheel housing-related problems?

03 A. If they weren't being worked on for warranty
04 problems or if they hadn't been in an accident, which
05 I don't believe they have, then it was flywheel
06 housing problems. Anything else would have been taken
07 care of.

08 Q. Why aren't flywheel housings for any of those
09 trucks in that month identified in Exhibit 6?

10 A. Because they didn't have the documentation when
11 they made out the exhibit to present to you. The
12 documentation wasn't documented.

13 Q. Fine. Then will you please give me the details
14 of each flywheel housing failure involving 8600, 8300,
15 8100, 6800, and 6200 that was responsible for those
16 trucks being out of service in the month of March
17 2003? I'd like to know the date of the failure, where
18 it was repaired and what was done to repair it, and
19 whether it was paid for by Caterpillar.

20 A. And none of it was paid for by Caterpillar. I can
21 tell you that much.

22 Q. In March 2003.

23 A. Why the trucks were out of service in March 2003?
24 Listen, you had trucks out of service in 2003 in March.

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01 Q. What I want to know is not that it could be one of
02 three reasons. What I want to know, and it is germane to
03 this case, I need to know when the failures occurred and
04 on what trucks?

05 A. You've already proven two out of three of the
06 reasons. You already have all of the warranty items,
07 which I don't think you do, because 8300 you don't. And
08 you have all of the accident reports. I saw them.

09 MR. GRUNERT: I'm going to suspend at this point.
10 I'm suspending the deposition. The principal purpose of
11 this deposition was to learn the specifics of the
12 supposed flywheel failures, and here we are September 28
13 and I still don't have them. So I'm going to suspend the
14 deposition at this time. We will visit about what to do
15 about it later.

16 THE VIDEOGRAPHER: This completes Tape 4. We are
17 off the record.

18 (Whereupon the deposition suspended at 4:27 p.m.)
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24

00142

01 Q. That's what Exhibit 2 shows. What I'd like to know
02 is the details of the flywheel housing failures that you
03 say account for some or all of that downtime, because
04 none of it appears in Exhibit 6.

05 A. I had stated before that I thought that Caterpillar
06 was denying claims way before the date of the trucks from
07 Minuteman. I thought it was around the first of the year
08 of 2003 that they denied any claims.

09 Q. I understand that that's what you think now, but
10 that's not my question. My question is tell me the
11 details of the flywheel housing failures that you say
12 account for some or all of the downtime of Trucks 8600,
13 8300, 8100, 6800, and 6200, in March 2003 as shown in
14 Exhibit 2. I want the details of the failures. I'd like
15 to know when they occurred and who repaired them.

16 A. Where the parts came from, how much you paid for
17 them, and so on and so forth, you know, I can't supply
18 everything in detail because one thing goes on to
19 another.

20 Q. Let's start with when did the failure occur?

21 A. The first days that the truck was out of service.

22 Q. How do you know that?

23 A. It's one of three reasons why it would be out of
24 service, as I stated.

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01 E R R A T A S H E E T

02 DEPOSITION OF: JOSEPH M. HOWARD, JR.

03 Upon reading and examining my testimony as herein
04 transcribed, I make the following additions, changes
05 and/or corrections, with the accompanying and corresponding
06 reason(s) for same:

07 Page Line Is Amended to Read

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20 JOSEPH M. HOWARD, JR.

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